

MALCOLM GRAY  
 Name HOSP  
P.O. Box 650  
Indian Springs NV 89070  
42404  
 Prison Number

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 DISTRICT OF NEVADA  
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UNITED STATES DISTRICT COURT  
 DISTRICT OF NEVADA

MALCOLM GRAY, )  
 Plaintiff, )  
 vs. )  
GREG COX et al., )  
SHERIL FOSTER, )  
JENNIFER NASH )  
DWIGHT NEVEN )  
TIMOTHY FILSON )  
BRUCE STROUD )  
LOAN BRUNER )  
 Defendant(s). )

CASE NO. 2:14-cv-01094-JAD-PAL  
 (To be supplied by the Clerk)

FIRST AMENDED  
 CIVIL RIGHTS COMPLAINT  
 PURSUANT TO  
 42 U.S.C. § 1983

"~~REDACTED~~"  
 JURY TRIAL DEMANDED

A. JURISDICTION

1) This complaint alleges that the civil rights of Plaintiff, Malcolm Gray,  
 (Print Plaintiff's name)

who presently resides at High Desert State Prison, were

violated by the actions of the below named individuals which were directed against

Plaintiff at HOSP P.O. Box 650 Indian Springs NV 89070 on the following dates  
 (institution/city where violation occurred)

6/24/13, 2/9/14, and \_\_\_\_\_.  
 (Count I) (Count II) (Count III)

**Make a copy of this page to provide the below  
information if you are naming more than five (5) defendants**

2) Defendant GREG COX resides at unknown,  
 (full name of first defendant) (address if first defendant)  
 and is employed as DIRECTOR OF NDOC. This defendant is sued in his/her  
 (defendant's position and title, if any)  
☒ individual ☒ official capacity. (Check one or both). Explain how this defendant was  
 acting

under color of law: Defendant is employed by the State of Nevada ex rel  
Nevada Department of Corrections

3) Defendant Sheryl Foster resides at unknown,  
 (full name of first defendant) (address if first defendant)  
 and is employed as Deputy Director. This defendant is sued in his/her  
 (defendant's position and title, if any)  
☒ individual ☒ official capacity. (Check one or both). Explain how this defendant was  
 acting

under color of law: Defendant is employed by the State of Nevada ex rel  
Nevada Department of Corrections

4) Defendant Jennifer Nash resides at unknown,  
 (full name of first defendant) (address if first defendant)  
 and is employed as Associate Warden. This defendant is sued in his/her  
 (defendant's position and title, if any)  
☒ individual ☒ official capacity. (Check one or both). Explain how this defendant was  
 acting

under color of law: Defendant is employed by the State of Nevada ex rel  
Nevada Department of Corrections

5) Defendant DWIGHT NEVEN resides at unknown,  
 (full name of first defendant) (address if first defendant)  
 and is employed as WARDEN. This defendant is sued in his/her  
 (defendant's position and title, if any)  
☒ individual ☒ official capacity. (Check one or both). Explain how this defendant was  
 acting

under color of law: Defendant is employed by the State of Nevada ex rel  
Nevada Department of Corrections

7) Defendant ~~BRUCE~~ STROUD resides at unknown address and is employed as Warden at H.D.S.P. This defendant is sued in his/her ☒ individual ☒ official capacity. Explain how this defendant was acting under color of law: Defendant is employed by the State of Nevada ex rel Nevada Department of Corrections.

8) Defendant C/O ARM BRUSTER resides at unknown address and is employed as correctional officer at H.D.S.P. This defendant is sued in his/her ☒ individual ☒ official capacity. Explain how this defendant was acting under color of law: Defendant is employed by the State of Nevada ex rel Nevada Department of Corrections.

## B. NATURE OF THE CASE

**1) Briefly state the background of your case.**

(1) On 6/24/13, approximately at or around 6pm  
date  
Defendant Armbruster neglected to pass out mail within Unit 11.  
The next day Unit 11 porters informed Malcolm Gray (hereinafter  
"Plaintiff") that they found a weeks worth of mail inside the  
unit 11 trash bin. Plaintiff was awaiting the original copy of  
an obituary of an immediate family member who passed away  
the previous week before.

(2) Plaintiff immediately filed grievance addressing the issue of the Unit 11 officers nefarious conduct of throwing away the mail, because Plaintiff filed grievances Defendant's Sherry Foster, Jennifer Nash, Dwight Neven, Timothy Elson, Bruce Stroud c/o Armbruster commence a retaliatory campaign against the Plaintiff

### C. CAUSE OF ACTION

neglecting to provide his mail and providing mail 20 days late.

(3) Defendants Cox, Foster, Nash, Neven and Stroud promulgated and promoted a policy that fails to protect inmates, the policy encourages violence, rape and death amongst the strong against weaker inmates by not providing a cell move and the Defendants know that the policy exposes Plaintiff and all inmates to serious harm. For example if two cellmates live in the same room together and one cellmate has a prison knife and the cellmate claims that the knife was his both cellmates go to the hole which leaves the cellmate who has not committed any violation loss of level status, job, wages.

(4) Defendants force inmates to live with well known Prison rapists. Furthermore the inmate lose his status without being served a notice of charges. Defendants policy discriminates and serves no penological interests, causes Plaintiff's hardship and punishment, and violates, chill; infringement of Plaintiff's First and Fourteenth Amendment right of the U.S. Constitution

WHEREFORE, Plaintiff prays to reserve the right to amend this complaint as additional evidence becomes available through discovery

## COUNT I

The following civil rights has been violated: FIRST AMENDMENT;

RETALIATION "REDESS PRISON GRIEVANCES" and FIRST AMENDMENT  
PROHIBITION AGAINST PRISON OFFICIALS DELIBERATE PREVENTION  
FROM COMMUNICATING WITH PRESS, MEDIA OR OUTSIDE WORLD  
UNDER THE U.S. CONSTITUTION.

Supporting Facts: [Include all fact you consider important. State the facts clearly, in your own words, and without citing legal authority or argument. Be sure you describe exactly what each specific defendant (by name) did to violate your rights].

Plaintiff realleges the Nature of the case, section  
paragraphs 1 and 4 as specifically alleged herein

(5) Plaintiff was denied and deprived of his First  
Amendment right to redress prison grievances and his First  
Amendment right to communicate with the outside world  
by Defendants Jennifer Nash, Dwight Nexen and Sheryl Foster  
when they retaliated against the Plaintiff for filing grievance  
on C/D Ambruster due to the fact that he discarded  
Plaintiff's and all of Unit 11 inmates mail in the trash.

(6) Due to the fact that Plaintiff filed grievances and  
had family members contact H.D.S.P officials Defendants  
Nash, Nexen and Foster commenced a retaliatory campaign  
against the Plaintiff that prevented him from receiving  
any mail and mail that he did receive was 30 days late.

(7) Defendants policy of depriving Plaintiff of his  
mail did not reasonably relate to legitimate penological  
interests, this was a blatant attempt to discourage and  
punish Plaintiff for exercising his constitutional right and  
prevent him from communicating with the outside world

due to the fact of his grievance writing Defendants even stamp received the mail fraudulently to cover up the retaliation.

(8) Defendant's Nash, Neven, Foster and Armbruster knew or should have known that their actions as described herein was a blatant violation of Plaintiff's First Amendment rights and was a chill, blatant infringement upon Plaintiff's First Amendment rights.

WHEREFORE Plaintiff prays for judgment against Defendants as is more fully enumerated

## COUNT II

The following civil rights has been violated: Fourteenth Amendment Right to  
DUE PROCESS : Failure to protect ; Liberty interest , Right to be  
Free From Discrimination

Supporting Facts: [Include all fact you consider important. State the facts clearly, in your own words, and without citing legal authority or argument. Be sure you describe exactly what each specific defendant (by name) did to violate your rights].

Plaintiff realleges the nature of the case section paragraphs 1-4 as specifically alleged herein.

(9) Plaintiff and all persons similarly situated were and are denied and deprived of their Fourteenth Amendment Right to Due Process and the right to be free from discrimination by Defendants Greg Cox, Dwight Kevon, Timothy Elison, Jennifer Nash and Bruce Stroud when they fail to protect inmates by promulgating a policy or custom that encourages and or forces inmates to fight before receiving bed moves. I have seen at least Eight instances wherein cellmates became violent with each other due to the NDOC bed move policy. And in only two of these instances did the Administration find out about the violent occurrences. I'm aware that in unit 11B pod 2 black inmates were trying to be separated as cellmates for at least 3 weeks. After no move came; violence erupted. 11B was locked down, one inmate was sent to Elly State Prison and the other is currently in 10F. The inmate in 10F was my cellmate previously in 2010. Also in unit 11D an inmate on an interstate compact here in NV from Washington State had a violent encounter with his cellmate. I worked with the Washington State inmate and was an associate of his cellmate. They had requested a bed move



**COUNT II** continued

The following civil rights has been violated: Fourteenth Amendment Right to  
Due process: Failure to protect; Liberty interest, Right to be  
Free from Discrimination

Supporting Facts: [Include all fact you consider important. State the facts clearly, in your own words, and without citing legal authority or argument. Be sure you describe exactly what each specific defendant (by name) did to violate your rights].

Several times previously, when a violent episode occurs the bed move policy is relaxed and inmates are allowed to move to more suitable cells. This is common knowledge among the inmate population. Inmate Donald Brown who is white but is classified as BLACK because of gang affiliation and who has made it clear that he can and only will cell with BLACK inmates for safety reasons and cultural reasons was forced to be level reduced as punishment for refusing to cell with a white inmate. All of Brown's previous cellmates were BLACK and all subsequent ones as well. However the Administration at ADP changes policy on whimsical theory. Right before Brown was punished for refusing to cell with a white inmate he was denied a job because he was classified as black and the job wanted to maintain "racial balance". If Brown had celled with the white inmate he (Brown) may have been attacked as a "race traitor". The Administration is fully aware of this fact yet they continue this untenable policy. The Defendants have been approached by CURE, Citizens United for the Rehabilitation of ERRANTS about all these topics as well. Specifically, Director Cox has been briefed repeatedly by CURE, grievances have been filed and denied and inmates are still left to fend for themselves. Director Cox has approved and known about these actions

and that knowledge has been communicated to Warden NEVEN. Warden NEVEN has passed this policy on to the Associate Wardens at HDSP who are B-STROUD, J. NASH, T. FILSON. Deputy Director FOSTER has attended CURE meetings with Director COX and is also implicated in this matter by having first hand knowledge about the matters listed herein.

10) Prisoners at HDSP are forced to live with well known prison rapists and other violent offenders due to the "No Convenient Bed Move" policy. Plaintiff and all similarly situated inmates must endure living with violent prisoners some who make "pruno" (prison alcohol) or who make fashion and keep prison made weapons in their cell. I witnessed Senior Correctional Officer DUGAN find pruno in cell 11F18. An associate of mine was housed in that cell (Derrick Williams). The cellmate of inmate Williams approached S/O Dugan and stated, "All that is mine, Williams didn't have nothing to do with anything". S/O Dugan then stated, "it doesn't matter anyway the WARDENS policy is that both inmates in the cell must be written up". Both inmates were written up, forced from their respective jobs and level reduced to more restrictive housing before being afforded a disciplinary hearing. This exact situation has the possibility of erupting into deadly violence. The Administration and Defendants COX, NEVEN, NASH, FILSON, and STROUD along with S. FOSTER know full well that inmates can not and should not be accountable for the actions or inactions of a cellmate. The policies in place are designed to create peer pressure amongst the inmate population. That peer pressure is utilized to encourage informing on a cellmate and or a violent confrontation

between the inmates or parties involved. All the Defendants are aware of "inmate justice" or an "inmate code" where - IN an guilty inmate is encouraged or forced to plead guilty to a charge or charges to save a cellmate or group of inmates from the sanctions to come. This encouragement or force is not needed sometimes because the guilty party if applicable will confess to the charges being brought. However on many occasions threats and or violence is used to bring about a confession amongst the inmate population. This is common knowledge among the staff under the direction of all the defendants. This shifting of the burden of security from the staff is a classic form of deliberate indifference. When officers are directed to charge both inmates with an infraction because the actions of one inmate in a cell they are encouraging "prison justice". The staff after charging both inmates are relying on peer pressure which may be malicious or benign to reach a guilty finding. Plaintiff was recently in the past 5 months fired from a job and sent to the hole. Some contraband items were found in a common area. After the items were found 10 inmates were interviewed but not before being terminated from work assignments. All 10 inmates were told as was I the plaintiff that unless someone "stands up" for the contraband we would all be fired and Level reduced. CCS Stevens told plaintiff those words and CCS Stevens also said that the actions taken were, "at the direction of the WARDEN". He did not state which warden. Furthermore upon arrival in Administrative Segregation at no time was plaintiff given an Administrative Segregation Notice of Classification Hearing. Also of note is the fact that plaintiff was the only one of ten inmates to be sent to the hole or Administrative Segregation.

Plaintiff feels this was retaliation. Plaintiff was asked "has anybody threatened you". My response was/is "No", so the AD SEG placement was not warranted and served no penological goal. This group punishment/peer pressure model of resolution poses a serious threat to all inmates.

The prison officials listed herein are knowingly and unreasonably disregarding an objectively intolerable risk of harm and they will continue to do so regardless of the violence, threats and even deaths that occur.

Prison officials will continue to adhere to this policy because they do not see a distinct difference between convenience and safety in retaliation to bad moves and or charges of misconduct when misconduct is obviously absent against one party or multiple parties.

1) As stated previously in the case of inmate Derrick Williams the staff level reduced him without Due Process. Eventually inmate Williams was found "NOT Guilty" but was forced to "earn" his way back to unit 11 or level one. All the while facing obstacles that were unwarranted along the way such as violence or charges of misconduct while being unduly classified to inappropriate housing levels. Plaintiff is similarly situated currently after a NOT Guilty finding for charges. However I have witnessed Robert Walker be level reduced without Due Process on the whim of CCS Stevens as retaliation for grievances. CCS Stevens even unassigned inmate Walker against the unwritten policy of only work/job related infractions will result in immediate termination. And against the stated wishes of his employer. The lack of enforcement and clarity allows for Due process violations and retaliation. The lack of oversight by senior Administrators, specifically all the Defendants listed creates a culture of cover-ups for rule breaking staff.

The STG or Security Threat Group inmates and the Gay, Bi, Trans-gender inmates appear to be able to move cells with no resistance. Yet the other segments of the population are not entitled to the same protections or considerations. I have seen at least ten (10) instances of STG inmates or GBT inmates moving cells for safety concerns. Yet the rest of the general population are not afforded this right. Also the Defendants know and promote a policy wherein when (2) two inmates are charged with an infraction and one pleads guilty the hearing officer will still find both inmates <sup>guilty</sup> of the infraction. This policy is used to control unruly inmates who mouth off or disrespect staff. The Defendants are aware that this action will cause permanent friction and animosity between those inmates. The guilty finding is used to solicit a violent act against the unruly inmate as pay back for the perceived slight. Plaintiff has seen two Bunk inmates who are cellmates be charged with an infraction for an illegal "tatto gun". One inmate plead guilty to the charge yet both were found guilty. This happens regularly at #DSP. The "no convenient bed move policy" combined with writing both inmates up or a group of inmates poses a clear and present danger to Plaintiff and all similarly situated inmates. Defendants Cox, Foster, Nash, Newen, Wilson and Strong know about the numerous assaults and the peer pressure policies of the staff. These Defendants encourage, promote oversee and authorize these unconstitutional violations. This combination of events chill and infringe upon the Fourteenth Amendment Rights of the Plaintiff and those similarly situated.

outline).

- a) Defendants: \_\_\_\_\_
- b) Name of court and docket number: \_\_\_\_\_
- c) Disposition (for example, was the case dismissed , appealed or is it still pending?):  
\_\_\_\_\_
- d) Issues raised: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- e) Approximate date it was filed: \_\_\_\_\_
- f) Approximate date of disposition: \_\_\_\_\_

- 2) Have you filed an action in federal court that was **dismissed because it was determined to be frivolous, malicious, or failed to state a claim upon which relief could be granted?**  
\_\_\_ Yes   X   No. If your answer is “Yes”, describe each lawsuit. (If you had more than three actions dismissed based on the above reasons, describe the others on an additional page following the below outline.)

Lawsuit #1 dismissed as frivolous, malicious, or failed to state a claim:

- a) Defendants: \_\_\_\_\_.
- b) Name of court and case number: \_\_\_\_\_.
- c) The case was dismissed because it was found to be (check one): \_\_\_\_\_ frivolous  
\_\_\_\_\_ malicious or \_\_\_\_\_ failed to state a claim upon which relief could be granted.
- d) Issues raised: \_\_\_\_\_  
\_\_\_\_\_
- e) Approximate date it was filed: \_\_\_\_\_
- f) Approximate date of disposition: \_\_\_\_\_

Lawsuit #2 dismissed as frivolous, malicious, or failed to state a claim:

- a) Defendants: \_\_\_\_\_.
- b) Name of court and case number: \_\_\_\_\_.

- c) The case was dismissed because it was found to be (check one): \_\_\_\_\_ frivolous  
\_\_\_\_\_ malicious or \_\_\_\_\_ failed to state a claim upon which relief could be granted.
- d) Issues raised: \_\_\_\_\_  
\_\_\_\_\_
- e) Approximate date it was filed: \_\_\_\_\_
- f) Approximate date of disposition: \_\_\_\_\_

Lawsuit #3 dismissed as frivolous, malicious, or failed to state a claim:

- a) Defendants: \_\_\_\_\_.
- b) Name of court and case number: \_\_\_\_\_.
- c) The case was dismissed because it was found to be (check one): \_\_\_\_\_ frivolous  
\_\_\_\_\_ malicious or \_\_\_\_\_ failed to state a claim upon which relief could be granted.
- d) Issues raised: \_\_\_\_\_  
\_\_\_\_\_
- e) Approximate date it was filed: \_\_\_\_\_
- f) Approximate date of disposition: \_\_\_\_\_

- 3) Have you attempted to resolve the dispute stated in this action by seeking relief from the proper administrative officials, e.g., have you exhausted available administrative grievance procedures? ☒ Yes ☐ No. If your answer is "No", did you not attempt administrative relief because the dispute involved the validity of a: (1) \_\_\_\_\_ disciplinary hearing; (2) \_\_\_\_\_ state or federal court decision; (3) \_\_\_\_\_ state or federal law or regulation; (4) \_\_\_\_\_ parole board decision; or (5) \_\_\_\_\_ other \_\_\_\_\_.

If your answer is "Yes", provide the following information. Grievance Number 20062963150  
Date and institution where grievance was filed 6/26/13 HSP/20062974703 2/9/14 HSP

Response to grievance: Denied  
\_\_\_\_\_  
\_\_\_\_\_

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**E. REQUEST FOR RELIEF**

I believe that I am entitled to the following relief:

- 1) Declaratory Judgment which declares that inmates have a constitutional right to be protected.
- 2) A permanent injunction ordering Defendants to cease and desist from implementing the unwritten policy of forcing prisoners from fighting to receive bed moves.
- 3) punitive damages of \$30,000 plus bill of cost for the protection of this action.

I understand that a false statement or answer to any question in this complaint will subject me to penalties of perjury. **I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE UNITED STATES OF AMERICA THAT THE FOREGOING IS TRUE AND CORRECT.** See 28 U.S.C. § 1746 and 18 U.S.C. § 1621.

TARZ MITCHELL  
(Name of Person who prepared or helped  
prepare this complaint if not Plaintiff)

M. Gray  
(Signature of Plaintiff)

10/10/14  
(Date)

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(Additional space if needed; identify what is being continued)

- 4) \$100,000 for each Defendant. 5) That this court maintain jurisdiction as to both parties and subject matter.



E. REQUEST FOR RELIEF

- 6) That each Defendant found guilty herein pay plaintiffs compensatory damages in excess of 10,000
- 7) That Defendants pay court costs, fees and a reasonable attorney fee.
- 8) That each Defendant is being sued in his/her individual capacity for monetary damages and in his/her official capacity for injunctive relief only.
- 9) That each Defendant that causes or enters into a union, agreement, common scheme or plan, design, plot or conspiracy to have plaintiff transferred, after becoming aware of the existence of this lawsuit pay plaintiff treble damages on account of a retaliatory animus to moot the claims herein.